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Joynwell Electric, Inc. and International Brotherhood of Electrical Workers, Local 90, AFL-CIO. Case 34-CA-8153

July 31, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon a charge and amended charges filed by the Union on December 11, 1997, and January 30, February 19, and March 13, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on May 11, 1998 against Joynwell Electric, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On July 8, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On July 10, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 10, 1998, notified the Respondent that unless an answer were received by June 17, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Connecticut corporation, with an office and place of business in

Orange, Connecticut, has been engaged as an electrical contractor in the building and construction industry. During the 12-month period ending March 31, 1998, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 for Honeywell, Inc., which is a Delaware corporation with an office and place of business in Rocky Hill, Connecticut, where it has been engaged in the building and construction industry. During the 12-month period ending March 31, 1998, Honeywell, Inc., in the course and conduct of its business operations described above, purchased and received at its Rocky Hill, Connecticut facility goods valued in excess of \$50,000 directly from points outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About October 2, 1995, the Respondent entered into a "Letter of Assent-A," authorizing the Connecticut Chapter of the National Electrical Contractors Association (N.E.C.A.) to be its collective-bargaining representative for all matters contained in the inside labor agreement between N.E.C.A. and the Union. On about October 2, 1995, the Respondent granted recognition to the Union and since that date has recognized the Union as the collective-bargaining representative of the employees in the appropriate unit set forth below, without regard to whether the Union has ever established its majority status under Section 9 of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period March 26, 1998, to March 25, 2000. For the period from October 2, 1995, through March 25, 2000, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the following appropriate unit:

All journeymen and apprentice electricians, wiremen and welders, employed by Respondent at its job sites within the State of Connecticut in the counties, cities, and geographical areas listed in Article VI, Section 6.08 of the agreement referred to above.

On about August 1, 1997, the Respondent unilaterally, and without the consent of the Union, failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement, including but not limited to failing to employ members according to articles V and VI, failing to pay wages according to article III, and failing to make certain monetary contributions according to article IV. These sub-

jects relate to wages, hours, and other terms and conditions of employment of the unit employees, and are mandatory subjects for the purposes of collective bargaining.

On or about March 2, 1998, the Union orally requested that the Respondent furnish it with the Respondent's payroll records from August 1, 1997, to the present. This information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since on or about March 2, 1998, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to recognize and bargain with the Union as the limited exclusive bargaining representative of the unit employees, to comply with the 1998–2000 agreement, including by employing members pursuant to articles V and VI of the agreement, and to make whole the unit employees for any loss of wages or earnings they may have suffered as a result of the Respondent's failure to do so since August 1, 1997, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 52 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondent to make all contractually required delinquent contributions and to reimburse the Union and/or benefit funds for its failure to do so since August 1, 1997, including any additional amounts due on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and by reimbursing them for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in

Ogle Protection Service, *supra*, with interest as prescribed in *New Horizons for the Retarded*, *supra*.¹

Further, we shall order the Respondent to furnish the Union with the information it requested on March 2, 1998.

ORDER

The National Labor Relations Board orders that the Respondent, Joynwell Electric, Inc., Orange, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to comply with the 1998–2000 collective-bargaining agreement, including but not limited to failing to employ members according to articles V and VI, failing to pay wages according to article III, and failing to make certain monetary contributions according to article IV.

(b) Failing and refusing to provide the payroll record information requested by the Union on March 2, 1998, which is necessary for, and relevant to, its performance of its duties as the exclusive bargaining representative of the employees in the following unit:

All journeymen and apprentice electricians, wiremen and welders, employed by Respondent at its job sites within the State of Connecticut in the counties, cities, and geographical areas listed in Article VI, Section 6.08 of the current collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with the Union as the limited exclusive bargaining representative of the employees set forth in the 1998–2000 collective-bargaining agreement, and comply with the terms and conditions of that agreement, including, but not limited to, employing members pursuant to articles V and VI, paying wages pursuant to article III, and paying certain monetary contributions pursuant to article IV.

(b) Make whole the unit employees for any loss of wages or earnings they may have suffered as a result of its unlawful conduct and by making the required contributions that have not been made since August 1, 1997, and by reimbursing them for any expenses ensuing from its failure to make the required contributions, as set forth in the remedy section of this decision.

(c) Make all contractually required contributions and reimburse the Union and/or benefit funds for its failure

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

to do so since August 1, 1997, as set forth in the remedy section of this decision.

(d) Provide the Union with the payroll records from August 1, 1997, to the present, as requested by the Union on March 2, 1998.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Orange, Connecticut, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 1, 1997.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 31, 1998

Sarah M. Fox,	Member
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to comply with the 1998–2000 collective-bargaining agreement with the International Brotherhood of Electrical Workers, Local 90, AFL–CIO, including but not limited to failing to employ members according to articles V and VI, failing to pay wages according to article III, and failing to make certain monetary contributions according to article IV.

WE WILL NOT fail and refuse to provide payroll record information requested by the Union on March 2, 1998, which is necessary for, and relevant to, its performance of its duties as the exclusive bargaining representative of the employees in the following unit:

All journeymen and apprentice electricians, wiremen and welders, employed by us at our job sites within the State of Connecticut in the counties, cities, and geographical areas listed in Article VI, Section 6.08 of the current collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain with the Union as the limited exclusive bargaining representative of the unit employees set forth in the 1998–2000 collective-bargaining agreement, and comply with the terms and conditions of that agreement, including but not limited to employing members pursuant to articles V and VI, paying wages pursuant to article III, and paying certain monetary contributions pursuant to article IV.

WE WILL make whole unit employees for any loss of wages or earnings they may have suffered as a result of our unlawful conduct and by making the required contributions that have not been made since August 1, 1997, and by reimbursing them for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL make all contractually required contributions and reimburse the Union and/or benefit funds for our failure to do so since August 1, 1997, with interest.

WE WILL provide the Union with our payroll records from August 1, 1997, to the present, as requested by the Union on March 2, 1998.

JOYNWELL ELECTRIC, INC.